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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 U-HAUL CO. OF NEVADA, INC., *et al.*,

11 Plaintiffs,

12 v.

13 GREGORY J. KAMER, LTD., *et al.*,

14 Defendants.  
15

Case No. 2:12-CV-231-KJD-CWH

**ORDER**

16 Before the Court is Defendant Gregory J. Kamer, Ltd.'s ("Kamer") Motion for Partial  
17 Summary Judgment on Plaintiffs' Causes of Action for Breach of Fiduciary Duty, Breach of the Duty  
18 to Maintain Confidentiality, Negligence, Constructive Fraud, and Special Damages as Said Claims  
19 are Subsumed by Plaintiffs' Cause of Action for Legal Malpractice (#129). Plaintiffs opposed the  
20 Motion (#186) and Defendant replied (#222).

21 **I. Background**

22 The parties and the Court are familiar with the procedural and factual background in this  
23 case. Therefore, the Court will provide only a brief recitation of the facts and circumstances  
24 relevant to the motion at issue. Plaintiffs retained Gregory J. Kamer, Ltd., ("Kamer") to represent  
25 them in several consolidated National Labor Relations Board ("NLRB") unfair labor practice  
26 proceedings. Kamer employed Wilcher during this period. NLRB General Counsel appointed Nathan

1 W. Albright (“Albright”) and Steven Wamser to prosecute Plaintiffs. After an affair between  
 2 Albright and Wilcher came to light, Plaintiffs enlisted the services of other law firms to reopen the  
 3 NLRB proceedings. Plaintiffs eventually settled the NLRB proceedings and brought this action  
 4 against Kamer and Wilcher for claims related to malpractice and improper use of confidential  
 5 information in the NLRB proceedings. In the instant Motion, Defendant seeks summary judgment on  
 6 the bulk of Plaintiffs’ claims against it, arguing that they are “subsumed” within the Legal  
 7 Malpractice claim.

## 8 II. Summary Judgment Standard

9 Summary judgment may be granted if the pleadings, depositions, answers to interrogatories,  
 10 and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any  
 11 material fact and that the moving party is entitled to a judgment as a matter of law. See Fed. R. Civ.  
 12 P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party bears the  
 13 initial burden of showing the absence of a genuine issue of material fact. See Celotex, 477 U.S. at  
 14 323. The burden then shifts to the nonmoving party to set forth specific facts demonstrating a  
 15 genuine factual issue for trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
 16 587 (1986); Fed. R. Civ. P. 56(e).

17 All justifiable inferences must be viewed in the light most favorable to the nonmoving party.  
 18 See Matsushita, 475 U.S. at 587. However, the nonmoving party may not rest upon the mere  
 19 allegations or denials of his or her pleadings, but he or she must produce specific facts, by affidavit  
 20 or other evidentiary materials provided by Rule 56(e), showing there is a genuine issue for trial. See  
 21 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The court need only resolve factual  
 22 issues of controversy in favor of the non-moving party where the facts specifically averred by that  
 23 party contradict facts specifically averred by the movant. See Lujan v. Nat’l Wildlife Fed’n., 497  
 24 U.S. 871, 888 (1990); see also Anheuser-Busch, Inc. v. Natural Beverage Distribs., 69 F.3d 337, 345  
 25 (9th Cir. 1995) (stating that conclusory or speculative testimony is insufficient to raise a genuine  
 26 issue of fact to defeat summary judgment). “[U]ncorroborated and self-serving testimony,” without

more, will not create a “genuine issue” of material fact precluding summary judgment. Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir. 2002).

Summary judgment shall be entered “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex, 477 U.S. at 322. Summary judgment shall not be granted if a reasonable jury could return a verdict for the nonmoving party. See Anderson, 477 U.S. at 248.

### III. Analysis

The Federal Rules of Civil Procedure apply in a Federal Court proceeding. See Hanna v. Plumer, 380 U.S. 460, 465 (1965). Rule 8(d)(3) provides that “[a] party may state as many separate claims or defenses as it has, regardless of consistency.” Further, in Nevada, “[a] litigant is entitled to have the jury instructed on all theories of his or her case which are supported by the evidence.” Allan v. Levy, 846 P.2d 274, 275-76 (1993) citing Beattie v. Thomas, 668 P.2d 268, 271 (1983). However, Plaintiffs’ control of such matters is not unlimited. For example, no jury instruction will be given for theories not supported by the trial evidence. Allan, 846 P.2d at 276. Also, “when a plaintiff asserts claims under different legal theories, he or she is not entitled to a separate compensatory damage award under each legal theory. Elyousef v. O’Reilly & Ferrario, LLC, 245 P.3d 547, 549 (Nev. 2010) (internal quotation and citation omitted).

Here, Defendant Kamer asserts that Plaintiffs’ claims for 1) breach of fiduciary duty, 2) breach of the duty to maintain confidentiality, 3) negligence, 4) constructive fraud, and 5) special damages should all be collapsed into the single claim of legal malpractice, as these claims are “essentially identical.” Kamer provides no controlling precedent suggesting that such action is desirable, much less required. Further, however many legal theories Plaintiffs assert, Plaintiffs are barred from multiple recoveries for the same injury, preventing any prejudice to Kamer. Lastly, even if identical claims “should” be collapsed together, Kamer’s argument fails for the simple reason that the claims are only “essentially” identical. It is wholly possible and even probable that a jury may find some peripheral matters established and not others, leading the jury to find for Plaintiffs on

1 some claims and not others. Far from prejudicing Kamer, collapsing Plaintiffs' claims at this stage  
2 would prejudice the Plaintiffs in this case. Accordingly, Defendant Kamer has failed to show that it  
3 is entitled to judgment as a matter of law.

4 IV. Conclusion

5 **IT IS HEREBY ORDERED** that Defendants' Motion for Partial Summary Judgment on  
6 Plaintiffs' Causes of Action for Breach of Fiduciary Duty, Breach of the Duty to Maintain  
7 Confidentiality, Negligence, Constructive Fraud, and Special Damages as Said Claims are Subsumed  
8 by Plaintiffs' Cause of Action for Legal Malpractice (#129) is **DENIED**.

9 DATED this 28th day of August 2013.

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Kent J. Dawson  
United States District Judge  
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